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7 CITY OF OAKLAND
8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**
12

13 CITY and COUNTY of SAN FRANCISCO,

14 Plaintiff,

15 v.

16 CITY of OAKLAND and PORT OF OAKLAND,

17 Defendants.
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Case No. 3:24-cv-02311-TSH

**DEFENDANT CITY OF OAKLAND'S
ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

1 Defendant City of Oakland (“Defendant”) hereby answers, objects, and otherwise responds
2 to Plaintiff’s Complaint as follows:

3 **INTRODUCTION**

- 4 1. For lack of information, Defendant City of Oakland denies the allegations in paragraph 1.
- 5 2. For lack of information, Defendant City of Oakland denies the allegations in paragraph 2.
- 6 3. For lack of information, Defendant City of Oakland denies the allegations in paragraph 3.
- 7 4. For lack of information, Defendant City of Oakland denies the allegations in paragraph 4.
- 8 5. For lack of information, Defendant City of Oakland denies the allegations in paragraph 5.
- 9 6. For lack of information, Defendant City of Oakland denies the allegations in paragraph 6.

10 **PARTIES**

- 11 7. Defendant City of Oakland admits the allegations in paragraph 7.
- 12 8. Defendant City of Oakland admits that it is a municipal corporation duly organized and
13 existing under the laws of the State of California, with its principal place of business at
14 1 Frank H. Ogawa Plaza, Oakland 94612. Defendant City of Oakland denies the
15 remaining allegation in paragraph 8.
- 16 9. Defendant City of Oakland admits that the Port of Oakland is an independent
17 department of the City of Oakland, which acts through its own legislative body, the
18 Board of Port Commissioner, and is governed by a Charter, which speaks for itself.
19 Defendant City of Oakland admits that the Port of Oakland conducts business in
20 California and within the Northern District of California, and that the Port of Oakland
21 owns and operates the Oakland Airport. Defendant City of Oakland denies the
22 remaining allegation in paragraph 8.

23 **JURISDICTION AND VENUE**

- 24 10. For lack of information, Defendant City of Oakland denies the allegations in paragraph
25 10.
- 26 11. Defendant City of Oakland admits the allegations in paragraph 11.
- 27 12. For lack of information, Defendant City of Oakland denies the allegations in paragraph 12.
- 28 13. For lack of information, Defendant City of Oakland denies the allegations in paragraph 13.

FACTS

14. For lack of information, Defendant City of Oakland denies the allegations in paragraph 14.

15. For lack of information, Defendant City of Oakland denies the allegations in paragraph 15.

16. For lack of information, Defendant City of Oakland denies the allegations in paragraph 16.

17. For lack of information, Defendant City of Oakland denies the allegations in paragraph 18.

18. For lack of information, Defendant City of Oakland denies the allegations in paragraph 18.

19. For lack of information, Defendant City of Oakland denies the allegations in paragraph 19.

20. For lack of information, Defendant City of Oakland denies the allegations in paragraph 20.

21. For lack of information, Defendant City of Oakland denies the allegations in paragraph 21.

22. For lack of information, Defendant City of Oakland denies the allegations in paragraph 22.

23. For lack of information, Defendant City of Oakland denies the allegations in paragraph 22.

24. For lack of information, Defendant City of Oakland denies the allegations in paragraph 24.

25. For lack of information, Defendant City of Oakland denies the allegations in paragraph 25.

26. For lack of information, Defendant City of Oakland denies the allegations in paragraph 26.

27. For lack of information, Defendant City of Oakland denies the allegations in paragraph

1 27.

2 28. For lack of information, Defendant City of Oakland denies the allegations in paragraph

3 28.

4 29. For lack of information, Defendant City of Oakland denies the allegations in paragraph

5 29.

6 30. For lack of information, Defendant City of Oakland denies the allegations in paragraph

7 30.

8 31. For lack of information, Defendant City of Oakland denies the allegations in paragraph

9 31.

10 32. For lack of information, Defendant City of Oakland denies the allegations in paragraph

11 32.

12 33. For lack of information, Defendant City of Oakland denies the allegations in paragraph

13 33.

14 34. For lack of information, Defendant City of Oakland denies the allegations in paragraph

15 34.

16 35. For lack of information, Defendant City of Oakland denies the allegations in paragraph

17 35.

18 36. For lack of information, Defendant City of Oakland denies the allegations in paragraph

19 36.

20 37. For lack of information, Defendant City of Oakland denies the allegations in paragraph

21 37.

22 38. For lack of information, Defendant City of Oakland denies the allegations in paragraph

23 38.

24 **FIRST CAUSE OF ACTION**

25 **Federal Trademark Infringement – 15 U.S.C. § 1114**

26 39. Defendant City of Oakland repeats and re-alleges its responses to previous paragraphs
27 with the same force and effect as if fully set forth herein.

28 40. For lack of information, Defendant City of Oakland denies the allegations in paragraph

1 40.

2 41. For lack of information, Defendant City of Oakland denies the allegations in paragraph

3 41.

4 42. Defendant City of Oakland denies the allegations in paragraph 42.

5 43. Defendant City of Oakland denies the allegations in paragraph 43.

6 44. Defendant City of Oakland denies the allegations in paragraph 44.

7 45. Defendant City of Oakland denies the allegations in paragraph 45.

8 46. Defendant City of Oakland denies the allegations in paragraph 46.

9 47. Defendant City of Oakland denies the allegations in paragraph 47.

10 48. Defendant City of Oakland denies the allegations in paragraph 48.

11 **SECOND CAUSE OF ACTION**

12 **Federal Unfair Competition/False Designation of Origin – 15 U.S.C. § 1125(a)**

13 49. Defendant City of Oakland repeats and re-alleges its responses to previous paragraphs
14 with the same force and effect as if fully set forth herein.

15 50. For lack of information, Defendant City of Oakland denies the allegations in paragraph
16 50.

17 51. For lack of information, Defendant City of Oakland denies the allegations in paragraph
18 51.

19 52. Defendant City of Oakland denies the allegations in paragraph 52.

20 53. For lack of information, Defendant City of Oakland denies the allegations in paragraph
21 53.

22 54. Defendant City of Oakland denies the allegations in paragraph 54.

23 55. For lack of information, Defendant City of Oakland denies the allegations in paragraph
24 55.

25 56. Defendant City of Oakland denies the allegations in paragraph 56.

26 57. Defendant City of Oakland denies the allegations in paragraph 57.

27 58. Defendant City of Oakland denies the allegations in paragraph 58.

28 59. Defendant City of Oakland denies the allegations in paragraph 59.

60. Defendant City of Oakland denies the allegations in paragraph 60.

THIRD CAUSE OF ACTION

Common Law Trademark Infringement

61. Defendant City of Oakland repeats and re-alleges its responses to previous paragraphs with the same force and effect as if fully set forth herein.

62. For lack of information, Defendant City of Oakland denies the allegations in paragraph 62.

63. For lack of information, Defendant City of Oakland denies the allegations in paragraph 63.

64. Defendant City of Oakland denies the allegations in paragraph 64.

65. Defendant City of Oakland denies the allegations in paragraph 65.

66. Defendant City of Oakland denies the allegations in paragraph 66.

67. Defendant City of Oakland denies the allegations in paragraph 67.

68. Defendant City of Oakland denies the allegations in paragraph 68.

69. Defendant City of Oakland denies the allegations in paragraph 69.

JURY DEMAND

Defendant hereby demands a jury trial in this action.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to the Complaint, Defendant City of Oakland alleges as follows. By alleging the matters set forth below as “Affirmative Defenses” Defendant does not thereby allege or admit that it has the burden of proof or burden of persuasion with respect to any of these matters. Furthermore, Defendant hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserves its right to amend this answer and assert all such defenses. Accordingly, Defendant states as follows:

FIRST AFFIRMATIVE DEFENSE

1 **AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE**, Defendant alleges that
 2 the Complaint and each claim therein, fail to state a claim upon which relief can be granted.

3 **SECOND AFFIRMATIVE DEFENSE**

4 **AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE**,
 5 Defendant alleges, on information and belief, that Plaintiff did not exercise ordinary care,
 6 caution, or prudence to avoid the alleged event, consequently, the subsequent injuries or
 7 damages, if any, sustained by Plaintiff were proximately caused by and contributed to by
 8 Plaintiff's comparative negligence, and any damages to which he might otherwise be entitled
 9 should be proportionately reduced by the degree of Plaintiff's negligence.

10 **THIRD AFFIRMATIVE DEFENSE**

11 **AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE**,
 12 Plaintiffs' action is barred because the alleged wrongful acts and omissions are based on the
 13 exercise of a discretionary duty or discretionary function on the part of the Defendant.
 14 Accordingly, the Defendant is immunized from liability as a matter of law.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE**,
 17 Defendant alleges that the causes of action in the Complaint are barred by the applicable statutes
 18 of limitation.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 **AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE**,
 21 Defendant alleges that any party or individual who contributed to and/or caused the alleged
 22 injuries and damages was not acting as its agent or with its knowledge or within the course
 23 and/or scope of employment with Defendant.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 **AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE**,
 26 Defendant alleges that if it in any fashion caused the injuries or damages alleged, although such
 27 liability is expressly denied herein, its acts and/or omissions were reasonable and privileged.
 28

SEVENTH AFFIRMATIVE DEFENSE

AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant alleges that Plaintiff's claims are barred by the doctrines of laches.

EIGHTH AFFIRMATIVE DEFENSE

AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant alleges that Plaintiff's claims are barred by waiver.

NINTH AFFIRMATIVE DEFENSE

AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant alleges that Plaintiff's claims are barred by res judicata.

TENTH AFFIRMATIVE DEFENSE

AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant alleges, on information and belief, that Plaintiff failed to mitigate damages.

ELEVENTH AFFIRMATIVE DEFENSE

AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant alleges that that any act or omission on the part of Defendant or its agents, was not the legal cause of Plaintiffs' alleged injuries.

TWELTH AFFIRMATIVE DEFENSE

AS A FURTHER, TWELTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant denies that Plaintiffs have been damaged in any sum or sums, or otherwise, or at all, by reason of any act or omission of Defendant.

THIRTEETH AFFIRMATIVE DEFENSE

AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant alleges that Plaintiffs' maintenance of this action is frivolous, vexatious and unreasonable, thereby entitling Defendant to sanctions and appropriate remedies (including without limitation attorney's fees) against Plaintiffs.

FOURTEENTH AFFIRMATIVE DEFENSE

AS A FURTHER, FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

Defendant alleges that it enjoys sovereign immunity against Plaintiffs' claims.

FIFTEENTH AFFIRMATIVE DEFENSE

AS A FURTHER, FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
Defendant alleges that it enjoys discretionary immunity against Plaintiffs' claims.

RESERVATION OF RIGHTS

Defendant reserves the right to amend its answer to allege any other matter, constituting evidence or an affirmative defense based on the discovery of additional facts.

PRAYER

WHEREFORE, Defendant City of Oakland prays that:

1. Plaintiffs take nothing by their Complaint;
2. Defendant has judgment against Plaintiffs;
3. Defendant be awarded its costs of suit; and
4. For such other and further relief as the Court may deem proper.

Dated: May 24, 2024

BARBARA J. PARKER, City Attorney

By: /s/ Christina Lum
Christina Lum, Deputy City Attorney
Attorneys for Defendant,
CITY OF OAKLAND